TITLE 3A

VEXATIOUS LITIGANTS

Definitions. 91
Motion to require security. 91.1.
Hearing. 91.2.
Order to furnish security - Adjustment of amount. 91.3.
dismissal if security not furnished. 91.4.
Motion stays litigations. 91.6.
Motion to prohibit filing of new litigation. 91.7.

91. Defenitions.

As used in this title, the following terms have the following meanings:

(a) " Litigation" means any civil action or proceeding commenced, maintained or pending in any state or

federal court of record.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or

any of the issues of fact or law, determined or concluded by the final deternination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction,or occurrence.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the

party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

S 391.1. Motion for order requiring security; grounds

In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that the will prevail in the litigation against the moving defendant.

S. 391.2 Scope of hearing; ruling not deemed deternination of issues

At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or afficavit, as may be material to the ground of the motion. No determination made by the court in determining or

ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

S 391.3. Order to furnish security; amount

If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

S 391.4. Dismissal for failure to furnish security

When security that has been ordered

furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

S 391.5 Repealed by states. 1982, c. 517, p. 2336, S 100

S 391.6 Stay of proceedings

When a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motin or the furnishing of the required security as the court shall determine.

S 391.7 Prefiling order prohibiting the filing of new litigation; contempt; conditions

(a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of such an order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of such litigation only if it appears that the litigation has merit and has not been filed for the prupose of harassment or delay. The

presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk shall not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without such an order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating hat the plaintiff is a vexatious litigant subject too a prefiling order as set forth in subdivision (a). The filing of such a notice shall automatically dismissed unless the plaintiff within 10 days of the filing of such notice obtains an

order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of any such order.

(d) The clerk of the court shall provide the Judicial Counsel a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Counsel shall maintain a record of vexatious litigants subject to such prefiling orders and shall annually disseminate a list of such persons to the clerks of the courts of this state.